

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

WACKER NEUSON PRODUCTION
AMERICAS, LLC,

Plaintiff/Counter-Defendant,

v

CITY OF NORTON SHORES,

Defendant/Counter-Plaintiff.

Case No. 1:19-cv-00018-JTN-ESC

Hon. Janet T. Neff

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JOINT RESPONSE TO [DOC. 51] ORDER TO SHOW CAUSE

NOW COME the parties, by and through their respective counsel, and state for their Joint Response to this Court's Order to Show Cause [Doc. 51], as follows:

Although the parties have been working cooperatively and diligently toward the completion of discovery, having nearly completed the written discovery aspect of the case and having taken several depositions, the parties have not yet been able to complete the depositions of several important witnesses. Because the parties strongly believe that mediation stands a much stronger chance of success if it occurs after these depositions have been taken, they have yet to go through that process. The parties wish to emphasize to the Court that they remain

committed to full participation in the mediation process, and they are hopeful that the matter can be resolved via that mediation. Indeed, it was only through an oversight that the parties did not request an extension of the mediation deadline at the time the Court entered its order extending the discovery deadline. The parties therefore respectfully request that the deadline for them to complete mediation be extended to February 28, 2020.

By way of more detailed background, the parties have essentially completed all written discovery – all that remains is for the City to provide responses to Wacker Neuson's most recent set of discovery requests, which counsel for the City has represented are forthcoming. It is important to note that a dispute arose over written discovery in September 2019, which necessitated a hearing before Magistrate Judge Carmody in October 2019. In resolving that dispute, Judge Carmody extended the deadline for the completion of discovery to December 31. However, because mediation was not specifically discussed at that hearing, neither party requested that the initial mediation deadline of November 29 also be extended, so it remained unchanged.

With regard to depositions, the parties have already taken the depositions of Wacker Neuson representatives in Menomonee Falls, Wisconsin, and the deposition of a key third party witness. The depositions of three representatives of the City were originally noticed for October 21, but were later re-noticed for December 13. Because the City had not yet fully responded to Wacker Neuson's most recent request for documents just prior to those depositions, however, they were adjourned, and they have now been re-noticed by agreement of the parties to take place on January 17, 2020. The parties are also attempting to coordinate schedules of two non-party witnesses located near Milwaukee, Wisconsin for depositions in January. January proved to

be the earliest time these non-party witnesses were available on the same date, which was desirable given the travel required by counsel to attend these depositions.

Once the foregoing depositions are complete and the transcripts obtained, the parties will be in a position to engage in a meaningful and productive mediation. Accordingly, the parties respectfully request that the deadline for the completion of facilitative mediation be extended to February 28, 2020. Such an extension will not in any way impact any other proceedings in this case, as the next deadline after February 28 is the September 11, 2020 settlement conference, in advance of a December 1, 2020 trial date.

Dated: December 19, 2019

/s/ Jeffrey D. Koelzer

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